

FWS, Interior/NOAA, Commerce

§ 453.06

The notice shall include: (1) The address to which such submissions are to be sent; (2) the deadline for such submissions; and (3) a statement of the type of information needed.

(b) *Public hearing.* (1) When the Chairman or four Committee members decide that oral presentations are necessary to enable the Committee to make its final determinations, a public hearing shall be held.

(2) The public hearing shall be conducted by (i) the Committee or (ii) a member of the Committee or other person, designated by the Chairman or by four members of the Committee.

(3) *Notice.* The Chairman shall publish in the FEDERAL REGISTER a general notice of a public hearing, stating the time, place and nature of the public hearing.

(4) *Procedure.* The public hearing shall be open to the public and conducted in an informal manner. All information relevant to the Committee's final determinations shall be admissible, subject to the imposition of reasonable time limitations on oral testimony.

(5) *Transcript.* Public hearings will be recorded verbatim and a transcript thereof will be available for public inspection.

§ 453.05 Committee meetings.

(a) The committee shall meet at the call of the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the

existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee's final determinations.

(c) Only members of the Committee may cast votes. In no case shall any representative cast a vote on behalf of a member.

(d) Committee members appointed from the affected States shall collectively have one vote. They shall determine among themselves how it will be cast.

(e) All meetings and records of the Committee shall be open to the public.

(f) The Chairman shall publish a notice of all Committee meetings in the FEDERAL REGISTER. The notice will ordinarily be published at least 15 days prior to the meeting.

§ 453.06 Additional Committee powers.

(a) *Secure information.* Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(b) *Subpoenas.* For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(c) *Rules and orders.* The Committee may issue and amend such rules and orders as are necessary to carry out its duties.

(d) *Delegate authority.* The Committee may delegate its authority under paragraphs (a) and (b) of this section to any member.

CHAPTER V—MARINE MAMMAL COMMISSION

<i>Part</i>		<i>Page</i>
501	Implementation of the Privacy Act of 1974	787
510	Implementation of the Federal Advisory Committee Act	791
520	Public availability of agency materials	793
530	Compliance with the National Environmental Policy Act.	795
540	Information security	796
550	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by Marine Mammal Commission	798
560	Implementation of the Government in the Sunshine Act	804

PART 501—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

501.1 Purpose and scope.

501.2 Definitions.

501.3 Procedure for responding to requests regarding the existence of records pertaining to an individual.

501.4 Requests for access—times, places and requirements for identification of individuals.

501.5 Disclosure of requested information.

501.6 Requests for correction or amendment of a record.

501.7 Agency review of requests for amendment or correction of a record.

501.8 Appeal of initial denial of a request for amendment or correction.

501.9 Fees.

AUTHORITY: Sec. 3, Privacy Act of 1974 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 49276, Oct. 21, 1975, unless otherwise noted.

§ 501.1 Purpose and scope.

(a) *Purpose.* The purpose of these rules is to fulfill the responsibilities of the Marine Mammal Commission (the "Commission") under section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(f) (the "Act") by establishing procedures whereby an individual will be notified if any system of records maintained by the Commission contains a record pertaining to him or her; by defining the times and places at which records will be made available and the identification requirements which must be met by any individual requesting access to them; by establishing procedures for disclosure to an individual, on request, of any record pertaining to him or her; and by establishing procedures for processing, reviewing, and making a final determination on requests of individuals to correct or amend a record pertaining to him or her, including a provision for administrative appeal of initial adverse determinations on such requests. These rules are promulgated with particular attention to the purposes and goals of the Act, and in accordance therewith provide for relative ease of access to records pertaining to an individual, and for maintenance by the Commission of only those records which are current, accurate, necessary, relevant and complete with respect to

the purposes for which they were collected.

(b) *Scope.* These rules apply only to "record" contained in "systems of records," defined by the Act as follows:

The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

The term "system of records" means of group of any record under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Notices with respect to the systems maintained by the Commission have been published in the FEDERAL REGISTER, as required by the Act. These rules pertain only to the systems of records disclosed in such notices, and to any systems that may become the subject of a notice at any time in the future.

(c) Nothing in these rules shall be construed as pertaining to requests made under the Freedom of Information Act, 5 U.S.C. 552.

§ 501.2 Definitions.

(a) As used in this part:

(1) The term *Act* means the Privacy Act of 1974, 5 U.S.C. 552a.

(2) The term *Commission* means the Marine Mammal Commission.

(3) The term *Director* means the Executive Director of the Marine Mammal Commission.

(4) The term *Privacy Officer* means an individual designated by the Director to receive all requests regarding the existence of records, requests for access and requests for correction or amendment; to review and make initial determinations regarding all such requests; and to provide assistance to any individual wishing to exercise his or her rights under the Act.

(b) Other terms shall be used in this part in accordance with the definitions contained in section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(a).

§ 501.3

50 CFR Ch. V (10-1-05 Edition)

§ 501.3 Procedure for responding to requests regarding the existence of records pertaining to an individual.

Any individual may submit a request to be notified whether a system of records, with respect to which the Commission has published a notice in the FEDERAL REGISTER, contains a record pertaining to him or her. Requests may be made in writing to the Privacy Officer or by appearing in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006 between the hours of 9:00 a.m. and 5:00 p.m. on any working day. Systems of records that are the subject of a request should be identified by reference to the system name designated in the Notice of Systems of Records published in the FEDERAL REGISTER. In the event a system name is not known to the individual, a general request will suffice if it indicates reasons for the belief that a record pertaining to the named individual is maintained by the Commission. Receipt of inquiries submitted by mail will be acknowledged within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) unless a response can also be prepared and forwarded to the individual within that time.

§ 501.4 Requests for access—times, places and requirements for identification of individuals.

Requests for access to a system of records pertaining to any individual may be made by that individual by mail addressed to the Privacy Officer, or by submitting a written request in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006, between the hours of 9 a.m. and 5 p.m. on any working day. Assistance in gaining access under this section, securing an amendment or correction under § 501.6, or preparing an appeal under §§ 501.5(d) and 501.8 shall be provided by the Privacy Officer on request directed to the Commission office. An individual appearing in person at the Commission offices will be granted immediate access to any records to which that individual is entitled under the Act upon satisfactory proof of identity by means of a document bearing the individual's pho-

tograph or signature. For requests made by mail, identification of the individual shall be adequate if established by means of submitting a certificate of a notary public, or equivalent officer empowered to administer oaths, substantially in accord with the following:

City of _____ County of _____
: ss (Name of individual) who
affixed (his) (her) signature below in my
presence, came before me, a (Title), in the
aforesaid County and State, this _____
day of _____, 19____, and established
(his)(her) identity to my satisfaction.
My _____ Commission _____ expires _____.

The certificate shall not be required, however, for written requests pertaining to non-sensitive information or to information which would be required to be made available under the Freedom of Information Act. The Privacy Officer shall determine the adequacy of any proof of identity offered by an individual.

[41 FR 5, Jan. 2, 1976]

§ 501.5 Disclosure of requested information.

(a) Upon request and satisfactory proof of identity, an individual appearing at the Commission offices shall be given immediate access to and permission to review any record, contained in a system of records, pertaining to him or her, shall be allowed to have a person of his/her choosing accompany him/her, and shall be given a copy of all or any portion of the record. The individual to which access is granted shall be required to sign a written statement authorizing the presence of the person who accompanies him or her, and authorizing discussion of his or her record in the presence of the accompanying person.

(b) Requests made by mail to the Privacy Officer at the Commission offices will be acknowledged within 10 days from date of receipt (excluding Saturdays, Sundays, and legal public holidays). This acknowledgement shall advise the individual whether access to the record will be granted and, if access is granted, copies of such records shall be enclosed.

(c) If the Privacy Officer initially determines to deny access to all or any

Marine Mammal Commission

§ 501.7

portion of a record, notice of denial shall be given to the individual in writing, within 30 days (excluding Saturdays, Sundays and holidays) after acknowledgement is given, and shall include the following:

(1) The precise record to which access is being denied;

(2) The reason for denial, including a citation to the appropriate provisions of the Act and of these Rules;

(3) A statement that the denial may be appealed to the Director;

(4) A statement of what steps must be taken to perfect an appeal to the Director; and,

(5) A statement that the individual has a right to judicial review under 5 U.S.C. 552a(g)(1) of any final denial issued by the Director.

(d) Administrative appeal of an initial denial, in whole or in part, of any request for access to a record, shall be available. An individual may appeal by submitting to the Director a written request for reconsideration stating therein specific reasons for reversal which address directly the reasons for denial stated in the initial notice of denial. If access is denied on appeal, a final notice of denial shall be sent to the individual within 30 days (excluding Saturdays, Sundays and holidays), and shall state with particularity the grounds for rejecting all reasons for reversal submitted by the individual. The denial shall then be deemed final for purposes of obtaining judicial review.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.6 Requests for correction or amendment of a record.

(a) Any individual may request the correction or amendment of a record pertaining to him or her in writing addressed to the Privacy Officer at the Commission offices. Verification of identity required for such requests shall be the same as that specified in § 501.4 of this part with respect to requests for access. Records sought to be amended must be identified with as much specificity as is practicable under the circumstances of the request, and at a minimum, should refer to the system name designated in the Notice of System Records published in the FEDERAL REGISTER, the type of record

in which the information thought to be improperly maintained or incorrect is contained, and the precise information that is the subject of the request (for example, system name, description of record, paragraph, sentence, line, words). Assistance in identifying a record, and in otherwise preparing a request, may be obtained by contacting the Privacy Officer at the Commission offices.

(b) A request should, in addition to identifying the individual and the record sought to be amended or corrected, include:

(1) The specific wording or other information to be deleted, if any;

(2) The specific wording or other information to be inserted, if any, and the exact place in the record at which it is to be inserted, and,

(3) A statement of the basis for the requested amendment or correction (e.g. that the record is inaccurate, unnecessary, irrelevant, untimely, or incomplete), together with supporting documents, if any, which substantiate the statement.

§ 501.7 Agency review of requests for amendment or correction of a record.

(a) Where possible, each request for amendment or correction shall be reviewed, and a determination on the request made, by the Privacy Officer within 10 days of receipt (excluding Saturdays, Sundays and holidays). Requests shall be acknowledged within that period where insufficient information has been provided to enable action to be taken. An acknowledgement shall inform the individual making the request of the estimated time within which a disposition of the request is expected to be made, and shall prescribe such further information as may be necessary to process the request. The request shall be granted, or an initial decision to deny shall be made, within ten days of receipt of all information specified in the acknowledgement (excluding Saturdays, Sundays and holidays).

(b) Within 30 days (excluding Saturdays, Sundays and holidays) after arriving at a decision on a request, the Privacy Officer shall either:

§ 501.8

50 CFR Ch. V (10–1–05 Edition)

(1) Make the requested amendment or correction, in whole or in part, and advise the individual in writing of such action; or,

(2) Advise the individual in writing that the request has been initially denied, in whole or in part, stating, with respect to those portions denied;

(i) The date of the denial;

(ii) The reasons for the denial, including a citation to an appropriate section of the Act and these Rules; and,

(iii) The right of the individual to prosecute an appeal and to obtain judicial review should a final denial result from the appeal.

(c) In reviewing a request for amendment or correction of a record, the Privacy Officer shall consider the following criteria:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information sought to be amended or corrected;

(3) The relevance and necessity of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(4) The timeliness and currency of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(5) The completeness of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(6) The degree of possibility that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and,

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual. If an amendment or correction is otherwise permissible under the Act and other relevant statutes, a request shall be denied only if the individual has failed to establish, by a preponderance of the evidence, the propriety of the amendment or correction in light of these criteria.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.8 Appeal of initial denial of a request for amendment or correction.

(a) The initial denial of a request for amendment or correction may be appealed by submitting to the Director the following appeal papers:

(1) A copy of the original request for amendment or correction;

(2) A copy of the initial denial; and

(3) A precise statement of the reasons for the individual's belief that the denial is in error, referring specifically to the criteria contained in § 501.7(c)(1) through (8).

The appeal must be signed by the individual. While these papers normally will constitute the entire Record on Appeal, the Director may add additional information, from sources other than the individual, where necessary to facilitate a final determination. Any such additional information added to the record shall promptly be disclosed to the individual to the greatest extent possible, and an opportunity for comment thereon shall be afforded prior to the final determination. Appeals should be submitted to the Director within 90 days after the date of the initial denial.

(b) The Director shall issue a final determination on appeal within thirty days (excluding Saturdays, Sundays, and legal public holidays) from the date on which a completed Record on Appeal (including any additional information deemed necessary) is received. Review, and final determination by the Director, shall be based upon the criteria specified in § 501.7(c)(1) through (8).

(c) If the appeal is resolved favorably to the individual, the final determination shall specify the amendments or corrections to be made. Copies of the final determination shall be transmitted promptly to the individual and to the Privacy Officer. The Privacy Officer shall make the requested amendment or correction and advise the individual in writing of such action.

(d) If the appeal is denied, the final determination shall state, with particularity, the reasons for denial, including a citation to an appropriate section of the Act and of these Rules. The final determination shall be forwarded promptly to the individual, together with a notice which shall inform

Marine Mammal Commission

§ 510.4

the individual of his or her right to submit to the Privacy Officer, for inclusion in the record, a concise statement of grounds for disagreement with the final determination. Receipt of any such statement shall be acknowledged by the Privacy Officer, and all subsequent and prior users of the record shall be provided copies of the statement. The notice shall also inform the individual of his or her right, under 5 U.S.C. 552a(g)(1), to obtain judicial review of the final determination.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

§ 501.9 Fees.

A fee of \$0.10 shall be charged for each copy of each page of a record made, by photocopy or similar process, at the request of an individual. No fee shall be charged for copies made at the initiative of the Commission incident to granting access to a record. A total copying fee of \$2.00 or less may be waived by the Privacy Officer, but fees for all requests made contemporaneously by an individual shall be aggregated to determine the total fee.

[41 FR 5, Jan. 2, 1976]

PART 510—IMPLEMENTATION OF THE FEDERAL ADVISORY COMMITTEE ACT

Sec.

510.1 Purpose.

510.2 Scope.

510.3 Definitions.

510.4 Calling of meetings.

510.5 Notice of meetings.

510.6 Public participation.

510.7 Closed meetings.

510.8 Minutes.

510.9 Uniform pay guidelines.

AUTHORITY: Sec. 8(a), Federal Advisory Committee Act, 5 U.S.C. App. I.

SOURCE: 41 FR 3306, Jan. 22, 1976, unless otherwise noted.

§ 510.1 Purpose.

The regulations prescribed in this part set forth the administrative guidelines and management controls for advisory committees reporting to the Marine Mammal Commission. These regulations are authorized by section 8(a) of the Federal Advisory Committee Act, 5

U.S.C. appendix I. Guidelines and controls are prescribed for calling of meetings, notice of meetings, public participation, closing of meetings, keeping of minutes, and compensation of committee members, their staff and consultants.

§ 510.2 Scope.

These regulations shall apply to the operation of advisory committees reporting to the agency.

§ 510.3 Definitions.

For the purposes of this part,

(a) The term *Act* means the Federal Advisory Committee Act, 5 U.S.C. appendix I;

(b) The term *Chairperson* means each person selected to chair an advisory committee established by the Commission;

(c) The term *Commission* means the Marine Mammal Commission, established by 16 U.S.C. 1401(a);

(d) The term *committee* means any advisory committee reporting to the Commission; and

(e) The term *Designee* means the agency official designated by the Chairman of the Commission (1) to perform those functions specified by sections 10(e) and (f) of the Act, and (2) to perform such other responsibilities as are required by the Act and applicable regulations to be performed by the "agency head."

§ 510.4 Calling of meetings.

(a) No committee shall hold any meeting except with the advance approval of the Designee. Requests for approval may be made, and approval to hold meetings may be given orally or in writing, but if approval is given orally, the fact that approval has been given shall be stated in the public notice published pursuant to § 510.5 of these regulations.

(b) An agenda shall be submitted to, and must be approved by, the Designee in advance of each committee meeting, and that meeting shall be conducted in accordance with the approved agenda. The agenda shall list all matters to be considered at the meeting, and shall indicate when any part of the meeting will be closed to the public on the authority of exemptions contained in the

§510.5

Freedom of Information Act, 5 U.S.C. 552(b).

[41 FR 3306, Jan. 22, 1976; 41 FR 4020, Jan. 28, 1976]

§510.5 Notice of meetings.

(a) Notice of each committee meeting shall be timely published in the FEDERAL REGISTER. Publication shall be considered timely if made at least 15 days before the date of the meeting, except that shorter notice may be provided in emergency situations.

(b) The notice shall state the time, place, schedule and purposes of the committee meeting, and shall include, whenever it is available, a summary of the agenda. The notice shall indicate the approximate times at which any portion of the meeting will be closed to the public and shall include an explanation for the closing of any portion of the meeting pursuant to §510.7.

§510.6 Public participation.

(a) All committee meetings, or portions of meetings, that are open to the public shall be held at a reasonable time and at a place that is reasonably accessible to the public. A meeting room shall be selected which, within the bounds of the resources and facilities available, affords space to accommodate all members of the public who reasonably could be expected to attend.

(b) Any member of the public shall be permitted to file a written statement with the committee, either by personally delivering a copy to the Chairperson, or by submitting the statement by mail to the Marine Mammal Commission Offices at the address indicated in the notice of meeting. Such statements should be received at least one week in advance of the scheduled meeting at which they are expected to be considered by the committee.

(c) Opportunities will ordinarily be afforded to interested persons to speak to agenda items during that portion of the open meeting during which that item is to be considered by the committee, subject to such reasonable time limits as the committee may establish, and consideration of the extent to which the committee has received the benefit of comments by interested persons, the complexity and the importance of the subject, the time con-

50 CFR Ch. V (10–1–05 Edition)

straints under which the meeting is to be conducted, the number of persons who wish to speak during the meeting, and the extent to which the statement provides the committee with information which has not previously been available and is relevant to its decision or other action on that subject. Interested persons may be required to serve reasonable notice of their intentions to speak so that the committee may assess whether procedures and scheduling for the meeting can be adjusted to accommodate large numbers of participants.

§510.7 Closed meetings.

(a) Whenever the committee seeks to have all or a portion of a meeting closed to the public on the basis of an exemption provided in 5 U.S.C. 552(b), the Chairperson shall notify the Designee at least 30 days before the scheduled date of the meeting. The notification shall be in writing and shall specify all the reasons for closing any part of the meeting.

(b) If, after consultation with the General Counsel of the Commission, the Designee finds the request to be warranted and in accordance with the policy of the Act, the request shall be granted. The determination of the Designee to grant any such request shall be in writing and shall state the specific reasons for closing all or a part of the meeting. Copies of the determination shall be made available to the public upon request.

§510.8 Minutes.

Detailed minutes shall be kept of each portion of each committee meeting. The minutes shall include: the time and place of the meeting; a list of the committee members and staff in attendance; a complete summary of matters discussed and conclusions reached; copies of all reports received, issued, or approved by the committee; a description of the extent to which the meeting was open to the public; and a description of public participation, including a list of members of the public who presented oral or written statements and an estimate of the number of members of the public who attended the open sessions. The Chairperson

Marine Mammal Commission

§ 520.2

shall certify to the accuracy of the minutes.

§ 510.9 Uniform pay guidelines.

(a) Compensation of members and staff of, and consultants to the Committee of Scientific Advisors on Marine Mammals is fixed in accordance with 16 U.S.C. 1401(e), 1403(b), and 1406.

(b) Compensation for members and staff of, and consultants to all advisory committees reporting to the Commission except the Committee of Scientific Advisors on Marine Mammals shall be fixed in accordance with guidelines established by the Director of the Office of Management and Budget pursuant to section 7(d) of the Act, 5 U.S.C. appendix I.

PART 520—PUBLIC AVAILABILITY OF AGENCY MATERIALS

Sec.

520.1 Purpose.

520.2 Scope.

520.3 Definitions.

520.4 Availability of materials.

520.5 Administrative appeal.

520.6 Extensions of time.

520.7 Fees.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 41 FR 3307, Jan. 22, 1976, unless otherwise noted.

§ 520.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of nonexempt material maintained by the Commission, provide for administrative appeal of initial determinations to deny requests for material, and prescribe uniform fees to be charged by the Commission to recover direct search and duplication costs.

§ 520.2 Scope.

(a) These regulations shall apply to all final opinions, including concurring and dissenting opinions, as well as orders, made by the Commission in the adjudication of cases; to all statements of policy and interpretations which have been adopted by the Commission and are not published in the FEDERAL REGISTER; to the Commission's admin-

istrative staff manuals and instructions to staff that affect a member of the public; and to any other Commission records reasonably described and requested by a person in accordance with these regulations—except to the extent that such material is exempt in accordance with paragraph (b) of this section.

(b) Requests for inspection and copies shall not be granted with respect to materials that are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

§ 520.3

50 CFR Ch. V (10–1–05 Edition)

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

§ 520.3 Definitions.

As used in these regulations:

(a) The term *Commission* means the Marine Mammal Commission;

(b) The term *Director* means the Executive Director of the Marine Mammal Commission;

(c) The term *exempt materials* means those materials described in § 520.2(b);

(d) The term *non-exempt materials* refers to all materials described in § 520.2(a), but not included in § 520.2(b); and

(e) The term *General Counsel* means the General Counsel of the Marine Mammal Commission.

§ 520.4 Availability of materials.

(a) All non-exempt materials shall be available for inspection during normal business hours at the Commission offices, 1625 I Street, NW., Room 307, Washington, DC. Space shall be made available at that location for the use of any person who is granted permission to inspect such materials.

(b) Requests to inspect, and obtain copies of, any material maintained by the Commission may be made in person at the Commission offices, or submitted in writing to the Executive Director, Marine Mammal Commission, 1625 I St., NW., Room 307, Washington, DC 20006. Each request should include a reasonable description of the material being sought, and should contain sufficient detail to facilitate retrieval of the material without undue delay. The Commission staff shall assist to the extent practicable in identifying material that is imprecisely described by the person requesting such material.

(c) An initial determination whether, and to what extent, to grant each request shall be made by the General Counsel or his delegate within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of that request. The person making the

request shall be notified immediately of the determination made. In making such determinations, it shall first be considered whether the material requested is of a type described in § 520.2(a); if it is, the request shall be granted unless the material is exempted by § 520.2(b). If the material requested is not of a type described in § 520.2(a), or is the subject of one or more exemptions, the request shall be denied.

(d) If a determination is made to grant a request, the relevant material shall promptly be made available for inspection at the Commission offices. Copies of the material disclosed shall be furnished within a reasonable time after payment of the fee specified in § 520.7. Copies of less than 10 pages of material requested in person ordinarily will be furnished immediately following the determination to grant the request and payment of the fee. Larger numbers of copies may be furnished at the earliest convenience of the Commission staff, but must be furnished within a reasonable time following payment of the fee.

(e) Whenever required to prevent a clearly unwarranted invasion of personal privacy, the General Counsel or his delegate shall determine that identifying details shall be deleted from an opinion, statement of policy, interpretation, or staff manual or instruction to which access is granted or of which copies are furnished. Where portions of the requested material are exempt under § 520.2(b), and are reasonably segregable from the remainder of the material, those portions shall be excised from the material disclosed. Whenever details are deleted or portions are excised and not disclosed, the notification shall include the information specified in § 520.4(f).

(f) If a determination is made to deny a request, the notification shall include a statement of the reasons for such action, shall set forth the name and position of the person responsible for the denial, and shall advise the requester of the right, and the procedures required under § 520.5, to appeal the denial to the Director.

Marine Mammal Commission

§ 530.1

§ 520.5 Administrative appeal.

(a) An appeal to the Director of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests must state specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests should be addressed to the Director at the Commission offices.

(b) The Director shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Director, any material with which the reversal is concerned shall be made available for inspection, and copies shall be furnished, in accordance with § 520.4(d).

(d) If the denial is upheld, in whole or in part, the Director shall include in the notification a statement of the requester's right of judicial review under 5 U.S.C. 552(a)(4), and the names and positions of the persons responsible for the denial.

§ 520.6 Extensions of time.

(a) Whenever unusual circumstances exist, as set forth in § 520.6(b), the times within which determinations must be made by the General Counsel on requests for access (10 working days), and by the Director on requests for reconsideration (20 working days), may be extended by written notice to the requester. The notice shall set forth the reasons for such extension, and the date on which a determination is expected to be made. The maximum extension of time allowed under this section shall be 10 working days, but shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, "unusual circumstances" shall mean:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission offices;

(2) The need to search for, collect, and appropriately examine a volumi-

nous amount of separate and distinct records which are the subject of a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 520.7 Fees.

(a) The following standard charges for document search and duplication, based on the direct costs of such services, must be paid before access to, or copies of material will be granted under these regulations:

(1) *Search*: \$4.00 per person-hour for clerical time; \$8.00 per person-hour for professional or supervisory time;

(2) *Duplication*: \$0.10 per page of photocopied material.

(b) The Commission shall furnish without charge, or at a reduced charge, copies of any material disclosed pursuant to these regulations, whenever the General Counsel or the Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

[41 FR 3307, Jan. 22, 1976; 41 FR 4020, Jan. 28, 1976]

PART 530—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

530.1 Purpose.

530.2 Ensuring that environmental documents are actually considered in agency decision-making.

530.3 Typical classes of action.

530.4 Environmental information.

AUTHORITY: National Environmental Policy Act, Pub. L. 91-190; 42 U.S.C. 4321 *et seq.*

SOURCE: 44 FR 52837, Sept. 11, 1979, unless otherwise noted.

§ 530.1 Purpose.

The purpose of this part is to establish procedures which supplement the National Environmental Policy Act (NEPA) regulations and provide for the implementation of those provisions

§ 530.2

identified in §1507.3(b) of the regulations which are applicable to the activities of the Commission in light of its statutory functions and responsibilities.

§ 530.2 Ensuring that environmental documents are actually considered in agency decision-making.

Section 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, Commission officials shall:

(a) Consider all relevant environmental documents in evaluating proposals for agency actions;

(b) Ensure that all relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes;

(c) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating any proposal for action by the Commission which is likely to significantly affect the quality of the human environment; and

(d) Where an environmental impact statement (EIS) has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS. All Commission officials directly involved in developing, evaluating, and/or reaching decisions on proposed actions shall consider relevant environmental documents and comply with the applicable provisions of the NEPA process.

§ 530.3 Typical classes of action.

Section 1507.3(b)(2), in conjunction with §1508.4, requires agencies to identify typical classes of action that warrant similar treatment under NEPA with respect to the preparation of EIS's or environmental assessments. As a general matter, the Commission's activities do not include actions for which EIS's or environmental assessments are required. Its activities involve:

(a) Consultation with and recommendations to other Federal agencies for actions relating to marine

50 CFR Ch. V (10–1–05 Edition)

mammal protection and conservation for which an EIS or environmental assessment is either not required by the NEPA regulations or for which an EIS or environmental assessment is prepared by another Federal agency; and

(b) Research contracts relating to policy issues, biological-ecological data needed to make sound management decisions, and better methods for collecting and analyzing data. These activities are not, by themselves, major Federal actions significantly affecting the quality of the human environment and the Commission's activities are therefore categorically excluded from the requirement to prepare an EIS or environmental assessment except for proposals for legislation which are initiated by the Commission, for which the Commission shall develop environmental assessments or EIS's, as appropriate, in accordance with the NEPA regulations. The Commission shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 530.4 Environmental information.

Interested persons may contact the Office of the General Counsel for information regarding the Commission's compliance with NEPA.

PART 540—INFORMATION SECURITY

Sec.

540.1 Policy.

540.2 Program.

540.3 Procedures.

AUTHORITY: Executive Order 12356.

§ 540.1 Policy.

It is the policy of the Marine Mammal Commission to act in accordance with Executive Order 12356 in matters relating to national security information.

[44 FR 55381, Sept. 26, 1979]

Marine Mammal Commission

§ 540.3

§ 540.2 Program.

The Executive Director is designated as the Commission's official responsible for implementation and oversight of information security programs and procedures. He acts as the recipient of questions, suggestions, and complaints regarding all elements of this program, and is solely responsible for changes to it and for insuring that it is at all times consistent with Executive Order 12356. The Executive Director also serves as the Commission's official contact for requests for declassification of materials submitted under the provisions of Executive Order 12356, regardless of the point of origin of such requests. He is responsible for assuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and that declassification requests submitted under the provisions of Executive Order 12356 are acted upon within 60 days of receipt.

[44 FR 55381, Sept. 26, 1979]

§ 540.3 Procedures.

(a) *Mandatory declassification review.* All requests for mandatory review shall be handled by the Executive Director or his designee. Under no circumstances shall the Executive Director refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the mandatory review provisions of Executive Order 12356, unless the fact of its existence or non-existence would itself be classified under Executive Order 12356. Requests for declassification shall be acted upon promptly providing that the request reasonably describes the information which is the subject of the request for declassification. In light of the fact that the Commission does not have original classification authority and national security information in its custody has been classified by another Federal agency, the Executive Director will refer all requests for national security information in its custody to the Federal agency that classified it or, if the agency that classified it has either ceased to exist or transferred the information in conjunction with a transfer of functions, to the appropriate federal

agency exercising original classification authority with respect to the same subject, for review and disposition in accordance with Executive Order 12356 and that agency's regulations and guidelines.

(b) *Exceptional cases.* When an employee or contractor of the Commission originates information that is believed to require classification, the Executive Director shall ensure that it is protected in accordance with Executive Order 12356 and shall promptly transmit it under appropriate safeguards to the agency with appropriate subject matter jurisdiction and classification authority for review and action in accordance with the Order and that agency's regulations and guidelines.

(c) *Derivative classification.* Derivative classification markings shall be applied to information that is in substance the same as information that is already classified, in accordance with Executive Order 12356, Section 2-1, unless it is determined through inquiries made to the originators of the classified information or other appropriate persons that the paraphrasing, restating, or summarizing of the classified information obviates the need for its classification, in which case the information shall be issued as unclassified or shall be marked appropriately. After verifying the current level of classification so far as practicable, paper copies of such derivatively classified information shall be marked so as to indicate:

(1) The source of the original classification;

(2) The identity of the Commission employee originating the derivatively classified document;

(3) The dates or events for declassification or review for declassification indicated on the classified source material; and

(4) Any additional authorized markings appearing on the source material.

(d) *Handling.* All classified documents shall be delivered to the Executive Director or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Executive Director or his designee is not available to receive

such documents, they shall be turned over to the Administrative Officer and secured, unopened, in the combination safe located in the Commission offices until the Executive Director or his designee is available. Under no circumstances shall classified materials that cannot be delivered to the Executive Director or his designee be stored other than in the designated safe.

(e) *Reproduction.* Reproduction of classified material shall take place only in accordance with Executive Order 12356, its implementing directives, and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number and distribution of copies shall be maintained, where required by the Executive Order, by the Administrative Officer and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

(f) *Storage.* All classified documents shall be stored in the combination safe located in the Commission's offices. The combination shall be changed as required by ISOO Directive No. 1, dated June 23, 1982. The combination shall be known only to the Executive Director and his designees with the appropriate security clearance.

(g) *Employee education.* All employees who have been granted a security clearance and who have occasion to handle classified materials shall be advised of handling, reproduction, and storage procedures and shall be required to review Executive Order 12356 and appropriate ISOO directives. This shall be effected by a memorandum to all affected employees at the time these procedures are implemented. New employees will be instructed in procedures as they enter employment with the Commission.

(h) *Agency terminology.* The use of the terms *Top Secret*, *Secret*, and *Confidential* shall be limited to materials classified for national security purposes.

[44 FR 55381, Sept. 26, 1979, as amended at 47 FR 55489, Dec. 10, 1982; 48 FR 44834, Sept. 30, 1983]

PART 550—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY MARINE MAMMAL COMMISSION

Sec.

- 550.101 Purpose.
- 550.102 Application.
- 550.103 Definitions.
- 550.104-550.109 [Reserved]
- 550.110 Self-evaluation.
- 550.111 Notice.
- 550.112-550.129 [Reserved]
- 550.130 General prohibitions against discrimination.
- 550.131-550.139 [Reserved]
- 550.140 Employment.
- 550.141-550.148 [Reserved]
- 550.149 Program accessibility: Discrimination prohibited.
- 550.150 Program accessibility: Existing facilities.
- 550.151 Program accessibility: New construction and alterations.
- 550.152-550.159 [Reserved]
- 550.160 Communications.
- 550.161-550.169 [Reserved]
- 550.170 Compliance procedures.
- 550.171-550.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4579, Feb. 5, 1986, unless otherwise noted.

§ 550.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 550.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 550.103 Definitions.

For purposes of this part, the term—
Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking

skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and condi-

tions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 550.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as

amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 550.104–550.109 [Reserved]

§ 550.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 550.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 550.112–550.129 [Reserved]

§ 550.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of

Marine Mammal Commission

§ 550.150

administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 550.131–550.139 [Reserved]

§ 550.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 550.141–550.148 [Reserved]

§ 550.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 550.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 550.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 550.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section

§ 550.151

through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

50 CFR Ch. V (10-1-05 Edition)

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§ 550.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 550.152-550.159 [Reserved]

§ 550.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons

Marine Mammal Commission

§ 550.170

with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 550.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 550.161–550.169 [Reserved]

§ 550.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity

Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The General Counsel for the Commission shall be responsible for coordinating implementation of this section. Complaints may be sent to the General Counsel for the Commission, Marine Mammal Commission, Room 307, 1625-I Street, NW., Washington, DC 20006.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 550.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant,

he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4579, Feb. 5, 1986, as amended at 51 FR 4579, Feb. 5, 1986]

§§ 550.171–550.999 [Reserved]

PART 560—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

- 560.1 Purpose and scope.
- 560.2 Definitions.
- 560.3 Open meetings.
- 560.4 Notice of meetings.
- 560.5 Closed meetings.
- 560.6 Procedures for closing meetings.
- 560.7 Recordkeeping requirements.
- 560.8 Public availability of records.

AUTHORITY: 5 U.S.C. 552b(g).

SOURCE: 50 FR 2571, Jan. 17, 1985, unless otherwise noted.

§ 560.1 Purpose and scope.

This part contains the regulations of the Marine Mammal Commission implementing the Government in the Sunshine Act (5 U.S.C. 552b). Consistent with the Act, it is the policy of the Marine Mammal Commission that the public is entitled to the fullest practicable information regarding its decision making processes. The provisions of this part set forth the basic responsibilities of the Commission with regard to this policy and offer guidance to members of the public who wish to exercise the rights established by the Act. These regulations also fulfill the requirement of 5 U.S.C. 552b(g) that each agency subject to the Act promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of section 552b.

§ 560.2 Definitions.

For purposes of this part, the term—
Administrative Officer means the Administrative Officer of the Marine Mammal Commission.

Commission means the Marine Mammal Commission, a collegial body established under 16 U.S.C. 1401 that functions as a unit and is composed of three individual members, each of whom is appointed by the President, by and with the advice and consent of the Senate.

Commissioner means an individual who is a member of the Marine Mammal Commission.

Executive Director means the Executive Director of the Marine Mammal Commission.

General Counsel means the General Counsel of the Marine Mammal Commission.

Meeting means the deliberations of at least a majority of the members of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include an individual Commissioner's consideration of official Commission business circulated in writing for disposition either by notation or by separate, sequential consideration, and deliberations on whether to:

(1) Hold a meeting with less than 7 days notice, as provided in § 560.4(d) of this part;

(2) Change the subject matter of a publicly announced meeting or the termination of the Commission to open or close a meeting or portions thereof to public observation, as provided in § 560.4(e) of this part;

(3) Change the time or place of an announced meeting, as provided in § 560.4(f) of this part;

(4) Close a meeting or portions of a meeting, as provided in § 560.5 of this part; or

(5) Withhold from disclosure information pertaining to a meeting or portions of a meeting, as provided in § 560.5 of this part.

Public observation means attendance by one or more members of the public at a meeting of the Commission, but does not include participation in the meeting.

Marine Mammal Commission

§ 560.5

Public participation means the presentation or discussion of information, raising of questions, or other manner of involvement in a meeting of the Commission by one or more members of the public in a manner that contributes to the disposition of Commission business.

§ 560.3 Open meetings.

(a) Except as otherwise provided in this part, every portion of every meeting of the Commission shall be open to public observation.

(b) Meetings of the Commission, or portions thereof, shall be open to public participation only when an announcement to that effect is issued under § 560.4(b)(4) of this part. Public participation shall be conducted in an orderly, nondisruptive manner and in accordance with such procedures as the chairperson of the meeting may establish. Public participation may be terminated at any time for any reason.

(c) When holding open meetings, the Commission shall make a diligent effort to provide ample space, sufficient visibility, and adequate acoustics to accommodate the public attendance anticipated for the meeting.

(d) Members of the public may record open meetings of the Commission by means of any mechanical or electronic device, unless the chairperson of the meeting determines that such recording would disrupt the orderly conduct of the meeting.

§ 560.4 Notice of meetings.

(a) Except as otherwise provided in this section, the Commission shall make a public announcement at least 7 days prior to a meeting.

(b) The public announcement shall include:

(1) The time and place of the meeting;

(2) The subject matter of the meeting;

(3) Whether the meeting is to be open, closed, or portions thereof closed;

(4) Whether public participation will be allowed; and

(5) The name and telephone number of the person who will respond to requests for information about the meeting.

(c) The public announcement requirement shall be implemented by:

(1) Submitting the announcement for publication in the FEDERAL REGISTER;

(2) Distributing the announcement to affected governmental entities;

(3) Mailing the announcement to persons and organizations known to have an interest in the subject matter of the meeting; and

(4) Other means that the Executive Director deems appropriate to inform interested parties.

(d) A meeting may be held with less than 7 days notice if a majority of the members of the Commission determine by recorded vote that the business of the Commission so requires. The Commission shall make a public announcement to this effect at the earliest practicable time. The announcement shall include the information required by paragraph (b) of this section and shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

(e) The subject matter of an announced meeting, or the determination of the Commission to open or close a meeting or portions thereof to public observation, may be changed if a majority of the members of the Commission determine by recorded vote that Commission business so requires and that no earlier announcement of the change was possible. The Commission shall make a public announcement of the changes made and the vote of each member on each change at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

(f) The time or place of an announced meeting may be changed only if a public announcement of the change is made at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

§ 560.5 Closed meetings.

(a) A meeting or portions thereof may be closed, and information pertaining to such meeting or portions

§ 560.6

thereof may be withheld from the public, only if the Commission determines that such meeting or portions thereof, or the disclosure of such information, is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) in fact properly classified pursuant to that Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve either accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose either investigatory records compiled for law enforcement purposes or information which if written would be contained in such records, but only to the extent that the production of the records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to either a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source or sources and, in the case of a record compiled either by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence inves-

50 CFR Ch. V (10-1-05 Edition)

tigation, confidential information furnished only by the confidential source or sources,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Commission. This exception shall not apply in any instance where the Commission has already disclosed to the public the content or nature of the proposed action or where the Commission is required by law to make such disclosure on its own initiative prior to taking final action on the proposal; or

(10) Specifically concern the issuance of a subpoena by the Commission, or the participation of the Commission in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Before a meeting or portions thereof may be closed to public observation, the Commission shall determine, notwithstanding the exemptions set forth in paragraph (a) of this section, whether or not the public interest requires that the meeting or portions thereof be open. The Commission may open a meeting or portions thereof that could be closed under paragraph (a) of this section if the Commission finds it to be in the public interest to do so.

§ 560.6 Procedures for closing meetings.

(a) A meeting or portions thereof may be closed and information pertaining to such meeting or portions thereof may be withheld under § 560.5 of this part only when a majority of the members of the Commission vote to take such action.

Marine Mammal Commission

§ 560.8

(b) A separate vote of the members of the Commission shall be taken with respect to each meeting or portion thereof proposed to be closed and with respect to information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed, so long as each meeting or portion thereof in such series involves the same particular matter and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each participating Commission member shall be recorded, and no proxies shall be allowed.

(c) A person whose interests may be directly affected by a portion of a meeting may request in writing that the Commission close that portion of the meeting for any of the reasons referred to in §560.5(a) (5), (6) or (7) of this part. Upon the request of a Commissioner, a recorded vote shall be taken whether to close such meeting or a portion thereof.

(d) Before the Commission may hold a meeting that is closed, in whole or part, a certification shall be obtained from the General Counsel that, in his or her opinion, the meeting may properly be closed. The certification shall be in writing and shall state each applicable exemptive provision from §560.5(a) of this part.

(e) Within one day of a vote taken pursuant to this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each Commissioner.

(f) In the case of the closure of a meeting or portions thereof, the Commission shall make publicly available within one day of the vote on such action a full written explanation of the reasons for the closing together with a list of all persons expected to attend the meeting and their affiliation.

§560.7 Recordkeeping requirements.

(a) Except as otherwise provided in this section, the Commission shall maintain either a complete transcript or electronic recording of the proceedings of each meeting, whether opened or closed.

(b) In the case of either a meeting or portions of a meeting closed to the

public pursuant to §560.5(a) (8) or (10) of this part, the Commission shall maintain a complete transcript, an electronic recording, or a set of minutes of the proceedings. If minutes are maintained, they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken and the reasons for which such actions were taken, including a description of the views expressed on any item and a record reflecting the vote of each Commissioner. All documents considered in connection with any action shall be identified in the minutes.

(c) The transcript, electronic recording, or copy of the minutes shall disclose the identity of each speaker.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete copy of the minutes of the proceedings of each meeting for at least two years, or for one year after the conclusion of any Commission proceeding with respect to which the meeting was held, whichever occurs later.

§560.8 Public availability of records.

(a) The Commission shall make available to the public the transcript, electronic recording, or minutes of a meeting, except for items of discussion or testimony that relate to matters the Commission has determined to contain information which may be withheld under §560.5 of this part.

(b) The transcript, electronic recordings or minutes of a meeting shall be made available for public review as soon as practicable after each meeting at the Marine Mammal Commission, 1625 I Street NW., Washington, DC 20006.

(c) Copies of the transcript, a transcription of the electronic recording, or the minutes of a meeting shall be furnished at cost to any person upon written request. Written requests should be addressed to the Administrative Officer, Marine Mammal Commission, 1625 I Street NW., Washington, DC 20006.